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No. ~~199~~ 199

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1919.

CHARLES E. SMITH,

Appellant,

against

KANSAS CITY TITLE & TRUST COMPANY, FEDERAL LAND BANK OF WICHITA, KANSAS, and FIRST JOINT STOCK LAND BANK OF CHICAGO, ILLINOIS,

Appellees.

Appeal From the District Court of the United States for the Western Division of the Western District of Missouri.

BRIEF AND ARGUMENT FOR APPELLEE, FEDERAL LAND BANK OF WICHITA, KANSAS.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 593.

CHARLES E. SMITH,
Appellant,

against

KANSAS CITY TITLE & TRUST COMPANY, FEDERAL LAND BANK OF WICHITA, KANSAS, and FIRST JOINT STOCK LAND BANK OF CHICAGO, ILLINOIS,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR APPELLEE, FEDERAL LAND BANK OF WICHITA, KANSAS.

Statement.

This is an appeal from a decree of the District Court dismissing the bill.

The suit was brought by the appellant as a stockholder of the defendant, Kansas City Title & Trust Company, to restrain that Company from investing its funds in Farm Loan Bonds issued by any Federal Land Bank or by any Joint Stock Land Bank; and to obtain a decree that the Federal Farm Loan Act of July 17, 1916 (39 Stat. 360) is unconstitutional and void, that the Farm Loan Bonds issued thereunder are unauthorized and illegal, and in particular that the tax exemption feature of the Act is invalid (Transcript of Record, p. 17).

The Federal Land Bank of Wichita, Kansas, on behalf of itself and of the other Federal Land Banks, and the First Joint Stock Land Bank of Chicago, Illinois, on behalf of itself and of the other Joint Stock Land Banks, were permitted on separate applications to intervene and were made parties defendant (*id.* pp. 19, 20, 34). These intervenors joined with the original defendant in a motion to dismiss the bill and the motion after argument was granted (*id.* p. 31).

This brief is presented on behalf of the Federal Land Banks.

Analysis of the Federal Farm Loan Act.

The provisions of the Federal Farm Loan Act of July 17, 1916, c. 245 (39 Stat. 360) as amended by the Act of January 18, 1918, c. 9 (40 Stat. 431), so far as they relate to the Federal Land Banks and are pertinent to the questions here involved may be succinctly described as follows:

The Federal Farm Loan Board.

The Federal Land Banks are Federal corporations organized by the Federal Farm Loan Board (sec. 4). This Board consists of five members, including the Secretary of the Treasury and four members appointed by the President by and with the advice and consent of the Senate, one of whom is designated by the President as the Farm Loan Commissioner and is the active executive officer of the Board. It has general supervision of the Federal Farm Loan Bureau, which is established in the Treasury Department (sec. 3).

Organization of Federal Land Banks.

It was made the duty of the Federal Farm Loan Board to divide continental United States, excluding Alaska, into twelve districts and to establish a Federal Land Bank in each district. The mode of organization was prescribed as follows: The Federal Farm Loan Board was to appoint five directors, for the purpose of temporary management. These directors were to make an "organization certificate," on the filing of which the Federal Land Bank was to become a body corporate (sec. 4). Each Federal Land Bank must have, before beginning business, a subscribed capital of not less than $750,000. The capital stock was to be divided into shares of $5 each and might be subscribed for and held by any individual, firm or corporation or by the Government of any State or of the United States. If within thirty days after the subscription books were opened any part of the minimum capital of $750,000 remained unsubscribed, the Secretary of the Treasury was

required to subscribe the remainder on behalf of the United States, and to pay for the shares out of any moneys in the Treasury not otherwise appropriated. Thereafter, stock was to be issued in connection with mortgage loans. Stock owned by the United States is not to receive dividends, but all other stock is to share in dividend distributions without preference. Each National Farm Loan Association and the Government of the United States are entitled to one vote for each share of stock and no other shareholder can vote (sec. 5).

National Farm Loan Associations.

National Farm Loan Associations are also Federal corporations which may be organized by persons desiring to borrow money on farm mortgage security. If the Federal Land Bank so recommends, the Federal Farm Loan Board may grant a charter to the applicants designating the territory in which such Association may make loans (sec. 7). Shares in these Associations are to be of the par value of $5 each, and no persons but borrowers on farm land mortgages are to be shareholders; such borrowers are to take stock to the amount of five percent of their loans (sec. 8). On this stock, there is double liability (sec. 9). Whenever any Association desires to secure for a member a loan on first mortgage from the Federal Land Bank of its district, it must subscribe for capital stock of that Land Bank to the amount of five percent of the loan. This stock must be paid off and retired upon full payment of the mortgage loan, and whenever it is retired the Association is to retire the corresponding shares of its stock (sec. 7). Among the described powers of National Farm Loan Associations may be noted the power

"to indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district"; and also the power "to issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per-centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of $25 or any multiple thereof." Such deposits, when received, are to be forthwith transmitted to such Land Bank and be invested by it in the purchase of farm loan bonds issued by a Federal Land Bank or in first mortgages as defined by the Act (sec. 11).

Permanent Organization of Federal Land Banks.

After subscriptions to stock in any Federal Land Bank by National Farm Loan Associations reach the sum of $100,000, the permanent officers and directors of the Land Bank are to take over its management from the temporary officers and directors first designated. The Board of Directors thus constituted is to consist of nine members, six of whom are to be chosen by National Farm Loan Associations, and the remaining three directors are to be appointed by the Federal Farm Loan Board (sec. 4). After subscriptions to the capital stock of any Land Bank by National Farm Loan Associations amount to $750,000, the bank must apply semi-annually to the payment and retirement of the shares which were issued upon subscriptions to the original capital twenty-five percent of all sums thereafter subscribed to capital stock until the original capital stock is retired at par. At least twenty-five percent of that part

of the capital of any Federal Land Bank of which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets and may consist of cash in the vaults of the Land Bank, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under rules of the Federal Farm Loan Board, provided that not less than five percent of such capital shall be invested in United States Government bonds (sec. 5).

Amendment of Act providing for continuance of temporary organization of Federal Land Banks.

By the amendment of January 18, 1918 (40 Stat. 431), the Secretary of the Treasury was authorized in his discretion, upon the request of the Federal Farm Loan Board from time to time during the fiscal years ending June 30, 1918, and June 30, 1919, respectively, to use any funds in the Treasury not otherwise appropriated in the purchase at par and accrued interest from any Federal Land Bank of Farm Loan Bonds issued by such bank. Such purchases were not to exceed $100,000,000 in either of the fiscal years specified.

It was then provided that the temporary organization of any Federal Land Bank as provided in section 4 of the Federal Farm Loan Act should be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment should be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations should equal the amount of stock held in such bank by the Government of the United States.

Restriction upon mortgage loans made by Federal Land Banks.

The mortgage loans by the Federal Land Banks are carefully restricted so as to be made only to actual cultivators of the soil and thus to promote agricultural development in a systematic manner throughout the country. They can be made only for the purpose of purchasing farm lands and equipment, and for improvements, or for liquidating existing indebtedness as stated. They are to be made to cultivators of the land mortgaged in an amount not above $10,000 and at a rate of interest not exceeding six percent per annum. The interest rate is to be the rate in the last series of farm loan bonds issued by the Land Bank making the loan with not more than one per cent added to cover administration expenses and profits (sec. 12).

General powers of Federal Land Banks.

Each Federal Land Bank is empowered to issue, subject to the approval of the Federal Farm Loan Board, and to buy and sell farm loan bonds authorized in the Act; to invest its funds in the purchase of qualified first mortgages on farm lands within its district; to hypothecate mortgages with the Farm Loan Registrar of the district (an officer appointed by the Federal Farm Loan Board) as security for farm loan bonds; to acquire and dispose of property necessary or convenient for the transaction of its business, and parcels of land acquired in satisfaction of debts or at judicial sales; to deposit its securities and its current funds subject to check with any member bank of the Federal Reserve System and to receive inter-

est thereon; to accept deposits of securities or of current funds from national Farm Loan Associations holding its shares but to pay no interest on such deposits; to borrow money, to give security therefor, and to pay interest thereon; to buy and sell United States bonds; and to charge applicants for loans, under regulations of the Federal Farm Loan Board, reasonable fees not exceeding actual cost of appraisal and determination of title (sec. 13). The Act provides that no Federal Land Bank shall have power "to accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized" by the Act; to loan on first mortgage except through National Farm Loan Associations or through described agents employed in localities where Associations have not been formed; to accept any mortgages on real estate except first mortgages made as provided in the Act and those taken as additional security for existing loans; to issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any National Farm Loan Association additional mortgages when the unpaid principal upon existing mortgages received therefrom exceeds twenty times the amount of its capital stock owned by such Association; or to demand or receive any commission or charge not specifically authorized in the Act (sec. 14). The bylaws of Federal Land Banks, regulating the conduct of business, are subject to the supervision of the Federal Farm Loan Board (sec. 4).

Every Federal Land Bank must carry semiannually to reserve twenty-five percent of its net earnings until the reserve account shall show a

credit balance equal to twenty percent of the outstanding capital stock of the bank, and thereafter is to carry to reserve account five percent of its net earnings annually. The reserves of Federal Land Banks are to be invested in accordance with the rules prescribed by the Federal Farm Loan Board (sec. 23). Upon default of any obligation, Federal Land Banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board for the purpose of liquidation. This Board may also appoint a Receiver of any National Farm Loan Association where such Association shall have been in default for a period of two years or its total amount of defaults, as specified, shall amount to at least $150,000 in the Federal Land Bank district. The Receiver may take possession of the assets of such Associations or of Federal Land Banks and may in the course of liquidation sell all their real and personal property on such terms as the Federal Farm Loan Board or a court of competent jurisdiction may direct. No National Farm Loan Association or Federal Land Bank may go into voluntary liquidation without the consent of the Board (sec. 29).

Farm Loan Bonds.

Farm loan bonds may be issued by any Federal Land Bank with the approval of the Federal Farm Loan Board (sec. 18), in denominations of $25, $50, $100, $500, and $1000, and are to run for specified minimum and maximum periods subject to payment and retirement at the option of the Land Bank at any time after five years from date of issue. Interest coupons are to be payable semiannually and bonds are to be issued in series of not less than $50,000, the amount and terms to be

fixed by the Federal Farm Loan Board, and at a rate of interest not to exceed five percent per annum. The Secretary of the Treasury is authorized to prepare suitable bonds in such form, subject to the provisions of the Act, as the Federal Farm Loan Board may approve. The expenses of the preparation, custody and delivery of the bonds are to be paid by the Secretary of the Treasury out of any moneys not otherwise appropriated, and reimbursement is to be effected through proportionate assessments on farm land banks. The bonds may be exchanged into registered bonds of any amount and re-exchanged into coupon bonds at the option of the holder under rules prescribed by the Board (sec. 20).

On application by any Federal Land Bank to the Federal Farm Loan Board for approval of an issue of bonds, the Federal Land Bank must tender to the Farm Loan Registrar of the district as collateral security first mortgages on farm lands qualified under the Act, or United States Government bonds, not less in aggregate than the amount of the proposed issue. The Federal Farm Loan Board, upon investigation and appraisement, may grant or reject the application in whole or in part (sec. 18).

Every Federal Land Bank issuing such bonds is to be primarily liable therefor, and is also to be liable, upon presentation of coupons, for interest payments due upon any farm loan bonds issued by other Federal Land Banks and remaining unpaid in consequence of their default; and every such bank is likewise to be liable for such portion of the principal of farm loan bonds issued by other Federal Land Banks as shall not be paid after their assets shall have been liquidated and distributed, provided that such losses either of interest or of

principal shall be assessed by the Federal Farm Loan Board against solvent Land Banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding (sec. 21).

Every farm loan bond issued by a Federal Land Bank must contain on its face "a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or endorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal Land Banks are liable for the payment of each bond" (sec. 21). It is provided that farm loan bonds shall be "a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits." They may be bought and sold by any member bank of the Federal Reserve System, and any Federal Reserve Bank may buy and sell farm loan bonds to the same extent and on the same limitations as are provided in the case of State, county, district and municipal bonds (sec. 27).

The Act provides for the amortization of loans, and all amortization or other payments on the principal of mortgages securing farm loan bonds are to constitute a trust fund in the hands of the Federal Land Bank to be applied (a) to pay off farm loan bonds issued by said bank as they mature; (b) to purchase at or below par farm loan bonds issued by said bank or by any other Federal Land Bank; (c) to loan on qualified first mort-

gages on farm lands within the bank district, and (d) to purchase United States Government bonds (sec. 22).

Federal Land Banks as depositaries and fiscal agents of the Government.

All Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, are to be depositaries of public money, except receipts from customs, under regulations prescribed by the Secretary. They may also be employed as financial agents of the Government; and they must perform all such reasonable duties in these capacities as may be required of them. The Secretary of the Treasury must require from the banks thus designated satisfactory security by the deposit of United States bonds or otherwise for the faithful performance of their duties. No Government funds deposited with the banks under this provision are to be invested in mortgage loans or farm loan bonds (sec. 6).

The Secretary of the Treasury is also authorized in his discretion upon the request of the Federal Farm Loan Board to make deposits for the temporary use of any Federal Land Bank out of any money in the Treasury not otherwise appropriated. The Federal Land Bank must issue therefor a certificate of indebtedness at a rate of interest not to exceed the current rate charged for other Government deposits to be secured by farm loan bonds or other collateral to the satisfaction of the Secretary of the Treasury. Any such certificate is to be redeemed and paid by the Land Bank at the discretion of the Secretary of the Treasury, and the aggregate of all sums so deposited is not to exceed $6,000,000 at any one time (sec. 32).

Exemption from Taxation.

The Act further provides that every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said Bank or Association under the provisions of the Act.

Farm Loan Bonds issued under the Act, as well as first mortgages executed to Federal Land Banks, are to "be deemed and held to be instrumentalities of the Government of the United States," and as such they and the income derived therefrom are to be exempt from Federal, State, municipal and local taxation. Real estate of such Banks or Associations is to remain subject to State, county or municipal taxes to the same extent, according to its value, as other real property is taxed (sec. 26).

The provisions of the Act relating to Joint Stock Land Banks are omitted, as these provisions will be presented by counsel for those banks.

The Organization of Federal Land Banks under the Act, the issue of Farm Loan Bonds and Activities of These Banks on behalf of the Government.

The bill as amended sets forth the facts. The continental United States excluding Alaska was divided, as provided in the Act, into twelve Federal Land Bank Districts, in each of which a Federal Land Bank has been established by the Federal Farm Loan Board (Transcript of Record,

p. 3). Under the provisions of Section 5 of the Act, the Secretary of the Treasury invested in the capital stock of these Federal Land Banks public funds to the amount of $8,892,130. That is, of the $9,000,000 required under the Act as the total initial capital of the twelve Federal Land Banks ($750,000 each) the Government took stock to the amount of $8,892,130. On July 1, 1919, the Secretary of the Treasury was still the holder, on behalf of the United States, of $8,265,809 in par value (*id.* p. 9).

These Federal Land Banks have taken from the owners of farm lands a large amount of mortgage notes and have made loans to the respective borrowers payable in installments extending over thirty-six years. After depositing these mortgages and notes with the Farm Land Registrar of the district (a federal official appointed by the Federal Farm Loan Board) the Federal Land Banks have issued Farm Loan Bonds and large amounts of these bonds have been sold to investors throughout the country (*id.* pp. 3, 4). Every Farm Loan Bond thus issued contains on its face a certificate, under section 21 of the Act, that it is issued under the authority of the Federal Farm Loan Board, has the approval in form and issue of that Board, is legal and regular in all respects and that it is not taxable by national, state, municipal or local authority.

Up to September 30, 1919, the Federal Land Banks had issued Farm Loan Bonds under the Act to the amount of $285,600,000. Under Section 32 of the Act, as amended on January 18, 1918, the Secretary of the Treasury has purchased Farm Loan Bonds issued by the Federal Land Banks to the amount of $149,775,000, of which about $135,-000,000 were held in the Treasury of the United

States on September 30, 1919 (*id.* p. 9). That is to say, over $150,000,000 of these bonds are held by the public.

The Federal Land Banks, on September 30, 1919, were the owners of United States Bonds to the amount of $4,230,805 (*id.*).

Under Section 32 of the Act, the Secretary of the Treasury has made considerable deposits of public moneys for the temporary use of the Federal Land Banks, a statement of which is set forth in the bill (*id.* p. 8).

During the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President, at the request of the Secretary of Agriculture, having set aside $5,000,000 for that purpose out of his $100,000,000 war funds. The three Federal Land Banks mentioned have made upwards of 15,000 of these seed grain loans, aggregating upwards of $4,500,000, and are now engaged in collecting these loans, all of which were secured by crop liens. The Federal Land Banks acted in this matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks but no compensation.

ARGUMENT.

The Act provides for the organization of financial aid in order to foster agricultural development throughout the country in a systematic manner by restricted loans at low rates of interest to cultivators of the soil. The Government provides the initial capital of the Federal Land Banks and authorizes the issue under the direction of Federal officers of Farm Loan Bonds to provide the additional moneys required.

Congress also takes the opportunity of creating, as it may, new financial institutions, which are available as aids to the Government in its fiscal operations.

We find it unnecessary to review the observations of appellant's counsel as to the genesis of the Act, as we find nothing which militates against its validity and we are not concerned with the apparent efforts of counsel to create an atmosphere. The fact that the matter was carefully considered, that there was an investigation abroad, and that in foreign countries the necessity for stimulating agricultural development by extending credits was recognized, certainly furnishes no argument against the Act. The most that can be said is that it points to a widespread need and a matter of the gravest public concern, which Congress was not compelled to ignore.

The question before the Court is not whether the measure is wise or expedient; that was a political question to be determined by Congress according to its judgment of the Nation's needs. This Court has had recent occasion to reiterate the familiar principle of judicial action that the Court does not undertake to review the motives of Con-

gress (*Hamilton, Collector* v. *Kentucky Distilleries & Warehouse Co.*, and other cases, decided December 15, 1919).

The bill assails the Federal Farm Loan Act in its entirety, thus challenging the validity of the organization of the Federal Land Banks and the issue of the Farm Loan Bonds. It was conceded in the Court below, and we suppose that it will not be disputed here, that the question of the validity of the tax exemption feature of the Act is not an independent one. The validity of that feature of the Act is a corollary to the determination of the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. Congress expressly declared that these bonds should be deemed to be instrumentalities of the Government of the United States and as such should be certified by the federal officers composing the Federal Farm Loan Board as regularly issued and exempt from taxation. The question is thus not as to intent but as to power. And there is no room for controversy as to the power to give the prescribed immunity if Congress had the power to create these corporations and to provide for the issue of these bonds.

In support of the Act we present these points:

(1) Congress has authority to create corporations whenever this is a means appropriate to facilitate the Government in the exercise of any proper function.

(2) Congress had authority to provide for the investment of public moneys in the capital stock of the Federal Land Banks, to be employed in the making of loans for the purpose of encouraging

agricultural development throughout the country, and to provide for the borrowing of money through the issue of Farm Loan Bonds for the same purpose.

(3) Congress had authority to create the Federal Land Banks as instrumentalities of the Government to act as depositaries of public moneys and as financial agents of the Government, and to equip the banks thus established with power to issue Farm Loan Bonds for the described purposes.

(4) Congress had power to protect from taxation the Federal Land Banks thus created and the Farm Loan Bonds thus issued under its authority.

FIRST.—Congress has authority to create corporations whenever this is a means appropriate to facilitate the Government in the exercise of any proper function.

The authority to create corporations is not specified as one of the powers of Congress, but it is embraced within the general power "to make all laws which shall be necessary and proper for carrying into execution" any of the powers vested in the Federal Government (Const., Art. I, sec. 8, subd. 18). It is well established that the words "necessary and proper" do not mean *indispensable*, but that Congress is authorized to select any means that may be in any way appropriate to assist the Government in the exercise of its constitutional functions. The degree of the necessity

is not a question of judicial cognizance. "The power of creating a corporation," said Chief Justice Marshall, in *M'Culloch* v. *Maryland*, 4 Wheat., 316, 411, 421, 423, "though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. . . . The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is, therefore, perceived, why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them. . . . We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . . . That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved. . . . But where the law is not prohibited, and is really

calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power." (See also, *Osborn*, v. *The Bank of the United States*, 9 Wheat., 738, 861; *National Bank* v. *United States*, 107 U. S., 445, 448; *California* v. *Central Pacific R.R. Co.*, 127 U. S., 1, 39; *Luxton* v. *North River Bridge Co.*, 153 U. S., 525, 529.)

In determining, then, whether Congress had power to create the corporations in question the Court has merely to consider whether they can be deemed to be appropriate to aid in the execution of any authority with which Congress is entrusted.

SECOND.—Congress had authority to provide for the investment of public moneys in the capital stock of the Federal Land Banks, to be employed in the making of loans for the purpose of encouraging agricultural development throughout the country, and to provide for the borrowing of money through the issue of Farm Loan Bonds for the same purpose.

The Federal Government through officers appointed for that purpose established the twelve Federal Land Banks, and, with the exception of a trifling amount, provided the entire initial capital. The Federal Farm Loan Board, composed of the Secretary of the Treasury and the appointees of the President, not only has continuously broad powers of control over the operations of these Federal Land Banks, but at the outset that Board appointed all the directors of each bank and these directors chose from their number

the officers of the bank and employed such attorneys, assistants and other employees as were necessary, subject to the approval of the Federal Farm Loan Board (sec. 4). The Act contemplated that the temporary organization of the Federal Land Banks should yield to a permanent organization consisting in the case of each bank of a board of directors of nine members, three of whom are to be appointed by the Federal Farm Loan Board. But by the amendment of January 18, 1918 (40 Stat. 431), the temporary organization is to be continued indefinitely, that is, it is to continue in the case of any Federal Land Bank so long as any Farm Loan Bonds issued by that bank are held by the Treasury of the United States. As already stated, the Government holds $135,-000,000 of these bonds, and it may hold these bonds for a long time to come. Further, the Federal Farm Loan Board has appointed a Farm Loan Registrar in each Land Bank District and also Land Bank Appraisers and Examiners. These appointees are public officers (sec. 3), and they and their successors are to perform their prescribed official functions as long as the Federal Land Banks exist.

Putting aside matters of form, it is plain that at the outset the Federal Land Banks are incorporated bureaus of the Government, and that up to the present time each of them has been, and for an indefinite time will be, directly and completely managed by those selected and controlled by Federal officers. At the start, the moneys available for loans were those supplied by the Treasury through its investment of the public funds in the capital stock of the Federal Land Banks, and the additional moneys used for the same purpose have been obtained by borrowing money on Farm Loan Bonds issued by the Federal Land Banks

under the direction of the Federal Farm Loan Board, which controls the issue and terms of these bonds. It is in this manner that all the outstanding Farm Loan Bonds issued by the Federal Land Banks have been placed in the hands of investors.

We thus come at once—apart from mere considerations of method and form—to the question of the power of Congress to appropriate the public money and to provide for the borrowing of money with the object of securing agricultural development throughout the country and thus assuring the Nation's essential food supply.

We conceive it to be demonstrable that Congress is not lacking in power to apply the public money, whether raised by taxation or by the exercise of the borrowing power, for this great public purpose. And it would necessarily follow that Congress having that power was free to act directly through the Treasury, or, if it saw fit, to organize moneyed institutions in order to afford a convenient instrumentality to achieve the same end. In this view, Congress was competent to establish the Federal Land Banks, to supply moneys by investment in the capital stock of these banks, and to provide for bond issues to raise additional moneys, to be used in a general and systematic manner throughout the country to stimulate the cultivation of the soil, as well as to create these financial institutions which would be available as governmental agencies, in addition to the facilities already existing, in connection with the fiscal operations of the Treasury.

These propositions, we believe, are abundantly supported by principle and practice.

The taxing power.

The objects to which the public money may be devoted are implied in the provision of the Constitution relating to the taxing power. This is that Congress shall have power

> "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States". (Art. I, sec. 8, subd. 1.)

There have been three views, representing serious differences of opinion, as to the meaning and scope of the clause—"provide for the common defence and general welfare of the United States."

One view, which at times has been advanced, is that these words do not qualify the preceding clause with respect to the laying of taxes, etc., but confer an independent power. The conclusive reason for rejecting this interpretation is that it would render nugatory the subsequent specification of the powers of Congress, as the Constitution would thus be deemed, in one sweeping clause, to confer upon Congress the authority to do anything which in its judgment might be regarded as conducive to the general welfare of the United States. Accordingly, the accepted view is that this clause does not create an independent power, but qualifies the provision giving the taxing power, that is, it states the purposes for which the taxing power may be exercised.

With this postulate, a second view is that the clause has no separate significance, but is limited and explained by the subsequent enumeration of the powers of Congress, to which it is a mere introduction. (See President Madison's letter to Mr. Stevenson, November 27, 1830; Virginia

Resolutions, January 7, 1800; 4 Elliot's Deb., 236, 280-281; Tucker on the Constitution, secs. 223-238). It is not questioned that this opinion has been held by eminent men, but we believe it to be inconsistent with accepted principles of constitutional construction and to be opposed to the decided weight of opinion and to the established practice since the Constitution was adopted. As Mr. Justice Story says, "there is a fundamental objection to the interpretation thus attempted to be maintained, which is, that it robs the clause of all efficacy and meaning. No person has a right to assume that any part of the Constitution is useless, or is without a meaning; and *a fortiori* no person has a right to rob any part of a meaning, natural and appropriate to the language in the connection in which it stands. Now, the words have such a natural and appropriate meaning as a qualification of the preceding clause to lay taxes. Why, then, should such a meaning be rejected?" (Story on the Constitution, sec. 912). In *Holmes* v. *Jennison*, 14 Pet., pp. 570, 571, it was said by Chief Justice Taney: "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. * * * No word in the instrument, therefore, can be rejected as superfluous or unmeaning." The arguments in support of this second view would seem to ignore this principle. Their elaboration cannot avail to obscure the fact that they endeavor to explain away the express words which qualify the taxing power; instead of expounding and applying, they seek to rewrite the Constitutional provision.

The third and prevailing view is that the clause does not confer an independent power, and yet is not superfluous as a mere introduction to, or as limited by, the subjoined enumeration of powers, but has its separate significance as prescribing the limits of the taxing power, and thus, by necessary implication, as defining the objects for which the public money may be appropriated by Congress. This view has the weighty support of Hamilton, Marshall and Story.

Mr. Hamilton, in his Report on Manufactures (December 5, 1791) said:

> "The National Legislature has express authority 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare,' with no other qualifications than that 'all duties, imposts, and excises shall be uniform throughout the United States; and that no capitation or other direct tax shall be laid, unless in proportion to numbers ascertained by a census or enumeration, taken on the principles prescribed in the Constitution', and that 'no tax or duty shall be laid on articles exported from any State.'
>
> "These three qualifications excepted, the power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts, and the providing for the common defence and general welfare. The terms 'general welfare' were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted with-

in narrower limits than the 'general welfare,' and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition.

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money.* The only qualification of the generality of the phrase in question, which seems to be admissible, is this: that the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot.

"No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conductive to the general welfare. A power *to appropriate money* with this latitude, which is granted, too, in express terms, would not carry a power *to do any other thing not authorized in the Constitution,* either expressly or by fair implication." (See also Hamilton's "Opinion on the Bank of the United States", February 23, 1791.)

There would seem to be no doubt that President Washington took the same view (Story on the Constitution, sec. 978, *note*).

Mr. Jefferson, in his opinion on the Bank of the United States, February 15, 1791 (4 Jefferson's Correspondence, 524, 525), says:

"To lay taxes to provide for the general welfare of the United States is to lay taxes

> *for the purpose* of providing for the general welfare. For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised." (See as to Jefferson's views, 1 Story on the Constitution, sec. 926, note.)

In the paper of President Monroe, entitled "Views of the President of the United States on the Subject of Internal Improvements" (transmitted to Congress in connection with his veto of the Cumberland Road Bill, May 4, 1822), which Mr. Justice Story describes as "the most thorough and elaborate view, which perhaps has ever been taken of the subject," it was argued that the clause in question does not confer upon the Federal government additional powers of control, but does authorize the laying of taxes and consequently the making of appropriations for purposes within the stated limits, thus enabling Congress to appropriate money in aid of enterprises which the general government cannot undertake or directly control (See Willoughby on the Constitution, sec. 269; Story on the Constitution, secs. 979-990). President Monroe said:

> "If we look to the second branch of this power, that which authorizes the appropriation of the money thus raised, we find that it is not less general and unqualified than the power to raise it. More comprehensive terms than to 'pay the debts and provide for the common defence and general welfare' could not have been used. So intimately connected with and dependent on each other are these two branches of power that had either been limited the limitation would have had the like effect on the other. . . . . Had it been intended that Congress should be restricted in the appropriation of the public money to such expenditures as were authorized by a

rigid construction of the other specific grants, how easy would it have been to have provided for it by a declaration to that effect. The omission of such declaration is therefore an additional proof that it was not intended that the grant should be so construed. . . . .

"If, then, the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants according to a strict construction of their powers, respectively, is there no limitation to it? Have Congress a right to raise and appropriate to any and to every purpose according to their will and pleasure? They certainly have not. The Government of the United States is a limited government, instituted for great national purposes, and for those only. Other interests are committed to the States, whose duty it is to provide for them. Each government should look to the great and essential purposes for which it was instituted and confine itself to those purposes. . . . . My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not state, benefit."

In *Gibbons* v. *Ogden*, 9 Wheat. 1, 199, Mr. Chief Justice Marshall said that "Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defence and general welfare of the United States." That we are not misconceiving the purport of this quotation is evident from the use which Mr. Justice Story makes of it (1 Story on the Constitution, sec. 927).

(See also Mr. Adams' letter to Mr. Stevenson, July 11, 1832; 2 Elliot's Deb., 170, 183, 195, 328, 344; 3 *id.*, 262, 290; 4 *id.*, 226; Mr. Justice Miller's "Lectures on the Constitution," pp. 229-231, 235.)

In the course of an exhaustive examination of the question, Mr. Justice Story thus states what is deemed to be the true construction of the constitutional provision (1 Story on the Constitution, secs. 922-924):

> "A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under such circumstances, necessarily a qualified power. If it is so, how then does it affect or in the slightest degree trench upon the other enumerated powers? . . . Each has its appropriate office and objects; each may exist without necessarily interfering with or annihilating the other (sec. 922). . . . But then, it is said, if Congress may lay taxes for the common defence and general welfare, the money may be appropriated for those purposes, although not within the scope of the other enumerated powers. Certainly, it may be so appropriated; for if Congress is authorized to lay taxes for such purposes, it would be

strange, if, when raised, the money could not be applied to them. That would be to give a power for a certain end, and then deny the end intended by the power (sec. 923). . . . That the same means may sometimes or often be resorted to, to carry into effect the different powers, furnishes no objection; for that is common to all governments. That an appropriation of money may be the usual or best mode of carrying into effect some of these powers, furnishes no objection; for it is one of the purposes for which the argument itself admits that the power of taxation is given. That it is indispensable for the due exercise of all the powers may admit of some doubt. The only real question is, whether, even admitting the power to lay taxes is appropriate for some of the purposes of other enumerated powers (for no one will contend that it will, of itself, reach or provide for them all), it is limited to such appropriations as grow out of the exercise of those powers. In other words, whether it is an incident to those powers, or a substantive power in other cases, which may concern the common defence and the general welfare. *If there are no other cases which concern the common defence and general welfare, except those within the scope of the other enumerated powers, the discussion is merely nominal and frivolous. If there are such cases, who is at liberty to say that, being for the common defence and general welfare, the Constitution did not intend to embrace them?* The preamble of the Constitution declares one of the objects to be, to provide for the common defence and to promote the general welfare; and if the power to lay taxes is in express terms given to provide for the common defence and general welfare, what ground can there be to construe the power short of the object,—to say that it shall be merely auxiliary to other enumerated

> powers, and not coextensive with its own terms and its avowed objects? One of the best established rules of interpretation, one which common-sense and reason forbid us to overlook, is, that when the object of a power is clearly defined by its terms, or avowed in the context, it ought to be construed so as to obtain the object, and not to defeat it. The circumstance that, so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or denied to have any operation? If the people frame a constitution, the rulers are to obey it. Neither rulers nor any other functionaries, much less any private persons, have a right to cripple it, because it is, according to their own views, inconvenient or dangerous, unwise or impolitic, of narrow limits or of wide influence" (italics *ours*).

These observations are quoted at length, for the argument could not be stated more convincingly and, in the absence of an explicit determination by this Court, it is believed that no words are entitled to greater weight. Mr. Justice Story was well acquainted with all opposing views and had critically studied them, and after reviewing the question from every angle and carefully examining the proceedings of the Constitutional convention, he reached the definite conviction which he sets forth in his commentaries. (*id.* secs. 906-932; 967-991).

While this Court has not definitely passed upon the construction of the clause with reference to the scope of the power of appropriation (see *United States* v. *Realty Co.*, 163 U. S., 427, 440), there are general expressions supporting the view that the words—"provide for the common de-

fence and the general welfare of the United States"—are to be taken as qualifying the power to lay taxes. See *Gibbons* v. *Ogden, supra.* In *United States* v. *Gettysburg Electric Railway Company,* 160 U. S., 668, 681, it is said: "It (Congress) has *the great power of taxation to be exercised for the common defense and general welfare*"; and this statement was made as a part of the reasoning of the court in sustaining the power of the United States to condemn land for the preservation of the battlefield of Gettysburg, as being for a public use, as it made direct appeal to patriotic sentiment and tended to enhance "love and respect for those institutions for which these heroic sacrifices were made" (*id.* p. 682). When the validity of the sugar bounty provision in the Tariff Act of October 1, 1890 (26 Stat., 567, par. 231), was challenged, the court found it unnecessary to decide the question (*Field* v. *Clark,* 143 U. S., 649, 695). Later, when, after the repeal of that provision Congress passed the Act of March 2, 1895 (28 Stat., 910, 933), providing a similar bounty upon sugar manufactured and produced before the repeal, it was held that the appropriation was valid, as being in the discharge of a moral obligation which Congress was entitled to recognize as a "debt" within the fair meaning of the constitutional provision (*United States* v. *Realty Co., supra; Allen* v. *Smith,* 173 U. S. 389, 394, 402). Certainly, this court has never decided adversely to the power of Congress to meet by its appropriations great national needs and has never construed the taxing clause otherwise than in accord with the construction placed upon it by Hamilton, Jefferson, Marshall, Monroe and Story.

Practical Construction of the power of Congress to appropriate the public money.

The power to tax and the power to appropriate the moneys raised by taxation are addressed to the same objects. The latter is qualified to the same extent as is the former. To hold otherwise, as Story says, "would be to give a power for a certain end, and then deny the end intended by the power." Congress, from the foundation of the government, has proceeded upon the view that the powers specified in the subsequent provisions of the Constitution do not limit its authority to appropriate money for the common defense and general welfare of the United States under the clause relating to taxes. Mr. Justice Story thus states the experience of the first forty years of our history (1 Story on the Constitution, *sec.* 991):

> "In regard to the practice of the government, it has been entirely in conformity to the principles here laid down. Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities; as in the relief of the St. Domingo refugees, in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812. (See Act of 12th Feb., 1794, Ch. 2; Act of 8th May, 1812, Ch. 79; 4 Elliot's Debates,

> 240). An illustration equally forcible of a domestic character, is in the bounty given in the cod fisheries, which was strenuously resisted on constitutional grounds in 1792, but which still maintains its place in the statute book of the United States" (See Act of 16th Feb., 1792, Ch. 6; 4 Elliot's Debates, 234-238).

In addition to the instances mentioned by Mr. Justice Story, we have numerous illustrations afforded by the action of Congress since his day. The annual appropriations show a practically continuous assertion of broad authority in the application of money, as, for example, in the support of the Bureau of Education (including the special provision for aiding the Education of the Blind, Act of March 3, 1879, Chap. 186, 20 Stat., 467), of the Smithsonian Institution, and of the constantly expanding and varied work of the Department of Agriculture (See, *e. g.*, Act of August 11, 1916, Chap. 313, 39 Stat., pp. 452-456; 463-467; 470). The validity of such action has not been questioned, and as Professor Willoughby says, "the doctrine has become an established one that Congress may appropriate money in aid of matters which the Federal Government is not constitutionally able to administer and regulate." (Willoughby on the Constitution, sec. 269.) Mr. Justice Story sums up the matter by saying (sec. 977): "The argument in favor of the power" (to appropriate money for the common defense and general welfare) "is derived in the first place, from the language of the clause conferring the power (which, it is admitted, in its literal terms, covers it); secondly, from the nature of the power, which renders it in the highest degree expedient, if not indispensable, for the due operations of

the national government; thirdly, from the early, constant, and decided maintenance of it by the government and its functionaries, as well as by many of our ablest statesmen, from the very commencement of the Constitution. So, that it has the language and intent of the text, and the practice of the government, to sustain it against an artificial doctrine set up on the other side."

Nothing could better illustrate the accepted principle than the appropriations to aid in agricultural development. Since the year 1839 there has been a constant disbursement of public moneys in the promotion and fostering of agriculture, in disseminating information, distributing seeds, and in aiding agricultural schools. For upwards of sixty years—since the Act of 1857 (11 Stat. 226)—Congress has made provision for the distribution of cuttings and seeds. It was in that year also that provision was made for investigation as to the consumption of cotton (*id.*).

The Department of Agriculture was established in 1862 (12 Stat. 387). The Act provided as to this department:

> "the general designs and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

The far-sighted policy of the Morrill Land Grant Act of 1862 (12 Stat. 503) made possible through donations of public land the establishment of institutions for instruction in agriculture throughout the country. Funds have been pro-

vided to maintain bureaus of agricultural statistics, for the introduction and protection of insectivorous birds, for laboratories to engage in experimentation in agricultural chemistry (12 Stat. 690). The great pests, or enemies of crops, have been the subject of constant consideration, and frequent appropriations have been made to aid in their elimination (21 Stat. 259; 40 Stat. 374).

In 1884, the Bureau of Animal Industry was established to disseminate information as to domestic animals and their diseases (23 Stat. 277). In 1890, the weather bureau was put in charge of the Department of Agriculture (26 Stat. 653), to make more readily available comprehensive information as to matters of special interest to those engaged in the cultivation of the soil.

The Irrigation Survey was established in 1889 under the direction of the Secretary of the Interior (25 Stat. 960), and in 1913, the Bureau of Mines (37 Stat. 681).

The scope of the activities of the Department of Agriculture now embraces those of the Weather Bureau; the Bureau of Animal Industry (including inspection and quarantine work, the eradication of scabies in sheep and cattle, tuberculin and mallein testing, experiments in animal feeding and breeding, including co-operation with State agricultural experiment stations, scientific investigations of hog cholera and other diseases of animals); the Bureau of Plant Industry (including investigations of diseases of plants, of orchard and other fruits, of forest and ornamental trees and shrubs, of soil bacteriology and plant-nutrition, of soil fertility, of plants yielding drugs, poisons and oils, of cereals and cereal disease, of sugar beets, and generally of crop produc-

tion, and the purchase and distribution of valuable seeds, bulbs, shrubs, vines, cuttings and plants); the Forest Service (including various investigations in forestry); the Bureau of Chemistry (embracing various chemical and physical tests and biological investigations of food products); the Bureau of Soils (including investigations of soil types and chemical properties, of productivity and as to possible sources of supply of potash, nitrates, etc.); the Bureau of Entomology (including investigations of insects affecting fruits, orchards, vineyards and crops); the Bureau of Biological Survey (including the investigation of the food habits of birds and mammals in relation to agriculture); the Division of Publications; the Bureau of Crop Estimates (covering all important data relating to agriculture); the States Relations Service (including farmers' co-operative demonstration work in connection with State organizations, and for the study of methods to combat the cotton-boll weevil); the Office of Public Roads and Rural Engineering (including investigations as to farm irrigation and drainage and construction of farm buildings); the Office of Markets and Rural Organization (including investigations of marketing methods, studies of co-operation among farmers in rural credits and other forms of co-operation in rural communities); and the Federal Horticultural Board (See 39 Stat. 446-476; 1134-1166; 40 Stat. 973-1008).

The federal appropriations in 1917, in support of agriculture amounted to upwards of $29,000,000, and in 1918 to upwards of $45,000,000.

There can be no question as to the continuous practical construction of the powers of Congress to raise and appropriate money to the effect that

this power is not limited to the objects enumerated in the subsequent provisions, but extends what may properly be deemed to be embraced within the general welfare as expressly provided in the clause which confers the taxing power itself.

As Mr. Chief Justice Marshall said in *M'Culloch* v. *Maryland,* 4 Wheat, 316, 401:

> "An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."

The borrowing power.

What has been said with respect to the scope of the taxing power of Congress is applicable to the borrowing power. Certainly, the borrowing power is not more limited as to its objects than the taxing power.

The Constitution provides (Art. I, sec. 8, subd. 2) that Congress shall have power "To borrow money on the credit of the United States." It is well settled that this power is an independent power which is given without limitation. As was said by Mr. Justice Gray, in *Juilliard* v. *Greenman,* 110 U. S., p. 444: "The words 'to borrow money,' as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes."

It is manifest that if Congress is entitled to ap-

ply the public money for the common defense and the general welfare of the United States, it necessarily has a wide range of discretion with respect to the objects to be selected. This discretion is not vested in the courts, but in Congress, and the authority of the courts to enforce constitutional restrictions does not entitle them to substitute their judgment for that of Congress as to any question of expediency or policy. (*Wilson* v. *New*, 243 U. S. 332; *Champion* v. *Ames*, 188 U. S., p. 363; *McCray* v. *United States*, 195 U. S., p. 55.) As has been said by Judge Cooley ("Taxation", 3d Ed., pp. 188, 189):

> "It is otherwise with the federal Union also; for though its powers are not general like those of the state, but are limited and defined by the federal constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes require broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections."

And if the action of Congress in applying public money may be judicially controlled, it is clear that this control could properly be exercised only in a case where it was perfectly plain that the broad limits of legislative discretion had been exceeded and that the application could not from any reasonable point of view be regarded as conducive to the common defense and general welfare.

The purposes of the Federal Farm Loan Act are public, not private; national, not local.

It must be apparent that Congress has power to employ the public moneys, whether raised by taxation or by the exercise of the borrowing power, for the purposes set forth in the Federal Farm Loan Act, unless it can be said—overriding the judgment of Congress—that these purposes are not public, but private, not national, but local. But it is submitted that the argument challenging the act as one for private or local purposes is wholly untenable.

It will hardly be disputed that the agricultural interests of the country, broadly considered, are of National and not merely of State concern. Any view that would treat the food supply of the people as not a matter directly related to the common defense and general welfare of the United States would be so narrow as to be quite inadmissible. The deliberate judgment of Congress, as already stated, is shown in the wide range of its departmental appropriations. The objection to the validity of the action of Congress in the present case, so far as it relates to the provision for the use of money (as distinguished from the actual conduct of agricultural activities within the States), must rest, it would seem, not upon the fact that the provision is in aid of the agricultural interests of the United States but upon the ground that it is designed to provide loans to owners of farm lands. The objection, then, is found to be a single one—that the purpose is private because of the benefit to individual cultivators of the soil.

It is, of course, a fundamental proposition that taxation must be for a public purpose. On this principle, State legislation authorizing municipali-

ties to issue bonds in aid of private enterprises has been declared in certain cases to be invalid. (See *Loan Association* v. *Topeka*, 20 Wall., 655; *Parkersburg* v. *Brown*, 106 U. S., 487; *Cole* v. *LaGrange*, 113 U. S., 1.) It may also be assumed that the provision conferring upon Congress the power to lay taxes, and hence the power to appropriate the public money to "provide for the common defence and general welfare of the United States", cannot be deemed to confer authority to do either for a purpose essentially private. But this familiar doctrine does not reach this case.

Just as well established is the principle that a purpose is not essentially a private one from the constitutional standpoint simply because private individuals may secure direct benefits through its execution. When direct individual benefit is involved, the question must always be, on a fair analysis, whether that benefit constitutes the object or is merely incidental to the public advantage which it is competent for the legislature to secure. Great measures of an undoubted public nature and advantage often carry with them benefits to individuals, or to classes of persons, whose immediate gain does not obscure the relation of the measures to the general welfare. Thus, it is recognized that while irrigation and drainage plans, which have become familiar subjects of legislation in many States, may directly benefit the owners of the property which is to be watered or drained, the scheme may still bear such a relation to the public welfare as to accord with the legal conception of a public use; and, in this view, legislation providing for the organization of irrigation and drainage districts in order to improve the property within them has been sustained.

Thus, it was said by this Court in *Fallbrook Irrigation District* v. *Bradley,* 164 U. S., 112, 161, 164:

> "To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the land owners, or even to any one section of the State. The fact that the use of the water is limited to the land owner is not therefore a fatal objection to this legislation. It is not essential that the entire community or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use. All land owners in the district have the right to a proportionate share of the water, and no one land owner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water. . . . . . Taking all the facts into consideration, ... we have no doubt that the irrigation of really arid lands is a public purpose, and the water thus used is put to a public use."

In *Clark* v. *Nash,* 198 U. S. 361, the question was as to condemnation for an enlarged irrigation ditch. It was insisted by the plaintiffs in error that the proposed use of the enlarged ditch across their land was not a public use. They argued "that no individual has the right to condemn land for the purpose of conveying water in ditches across his neighbor's land, for the purpose of irrigating his own land alone, even where there is, as in this case, a state statute permitting it". But the Court declined to sustain this contention, holding that the fact that the individual was to benefit was not necessarily controlling,

and that the exigencies of soil and climate might properly be taken into consideration.

Strickley v. *Highland Boy Gold Mining Company,* 200 U. S. 527, affords a striking illustration. The proceeding was one to condemn a right of way for an aerial bucket line across a placer mining claim of the plaintiffs in error. The Court again recognized "the inadequacy of use by the general public as a universal test" and that the public welfare of a state might demand that such rights of way should be accorded for aerial lines between the mines upon its mountain sides and the railways in the valleys below and hence that it could not be said that the individual benefit to the land owner in question took the case out of the category of permissible condemnation. As was said in *Hairston* v. *Danville & Western Railway Company,* 208 N. Y. 598, 606, the determination of the question by the courts whether the nature of the use was public or private had been influenced "by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people."

In *O'Neill* v. *Leamer,* 239 U. S. 244, the plaintiffs in error contended that the drainage plan in question was simply one for the private advantage of the property owners benefited. But the Court said that "States may take account of their special exigencies, and when the extent of their arid or wet lands is such that a plan for irrigation or reclamation according to districts may fairly be regarded as one which promotes the public interest, there is nothing in the Federal Constitution which denies to them the right to formulate this policy or to exercise the power of eminent domain

in carrying it into effect. * * * Nor is it an objection that private property within the district, which is established in execution of the public policy, will be benefited" (*id.*, p. 253; see also *Houck* v. *Little River Drainage District*, 239 U. S. 254).

In these cases, this Court in enforcing the Fourteenth Amendment has recognized the propriety of giving weight to State exigencies and of regarding with great respect the judgment of the State courts upon what should be deemed public uses within the State. Certainly, no less weight should be accorded to the determinations of Congress as to what is required for the general welfare of the country. If the fact that individuals are to benefit directly from the execution of the approved policy does not require the conclusion that the purpose is private in the one case, it does not require such a conclusion in the other. And when it is contended that provision by Congress for the use of public money is for a purpose essentially private, it cannot be doubted that due respect to the judgment of Congress requires the consideration of all the circumstances and conditions which can possibly support its action; and although this action takes a form through which direct advantages are to accrue to individuals, or groups, there must still be the inquiry whether, notwithstanding this fact, the provision can be regarded as being for a purpose not special, private, or local, but in truth general and national.

Is then, the plan of the Federal Farm Loan Act primarily in aid of private or individual interests as distinguished from the common defense and general welfare of the United States?

With respect to the features of the plan it is to be noted,

(1) The Act provides a *system* designed to promote agricultural development.

(2) The loans are made only to those who are, or are about to become, actual cultivators of the soil, and are made upon the security of farm mortgages.

(3) These mortgage loans are made only for the following purposes: (a) to provide for the purchase of land for agricultural uses; (b) to provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; (c) to provide buildings and for the improvement of farm lands ("equipment" and "improvement" to be defined by the Federal Farm Loan Board); and (d) to liquidate indebtedness of the owner of the land mortgaged existing at the time of the organization of the first National Farm Loan Association within the county, or indebtedness subsequently incurred for the purposes above mentioned. No loan is to exceed fifty percent of the value of the land mortgaged and twenty percent of the value of the permanent insured improvements thereon and the amount of loans to any one borrower is not to exceed $10,000.

(4) The system is for continental United States (save Alaska), that is, the mortgage loans are to be available to actual cultivators of the soil throughout the country.

It is thus apparent that the Act provides for systematic aid to the development of agriculture, so devised as to be generally available throughout the country and so limited as to indicate the purpose to promote the actual cultivation of the soil in every part of the United States where cul-

tivation is possible and where aid is needed for that specific purpose.

That this method of providing financial aid was deemed to be essential to the welfare of the country clearly appears from an examination of the views which prevailed in Congress. The cultivators of the soil, whose activities form the necessary foundation of the common prosperity, were lacking in the facilities which would enable agricultural development to be pressed to the utmost in response to the National exigency. To say the least this view was an entirely reasonable one. It makes no difference whether or not the Court would take the same view, as we submit that the Court would be unable to say that it was so destitute of foundation that it could not be entertained by Congress. The matter was peculiarly one for the exercise of the legislative discretion. That credit difficulties were an embarrassment to cultivators of the soil was not confined to any one section of the country. The significant thing in the prolonged hearings that were had upon this subject by committees of Congress was that the same difficulties were encountered throughout the country and that a systematic country-wide relief appeared to be of grave importance. In the report of the Committee on Banking and Currency in May, 1916 (H. R. Report, No. 630) it was said:

> "It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-

land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

To say that Congress was limited to the expenditure of many millions of dollars in investigations, maintenance of bureaus, inspections, purchase and distribution of seeds and plants, cooperation with States in experimentation, furnishing of bulletins and of statistical information, in order to foster agricultural development, and could not undertake this organization of financial aid which was essential to that development, would be to establish an artificial distinction unknown to the Constitution and to conceive a Government not deserving to be called National.

Nor can the legislation be condemned as being outside the sphere of permissible Federal action without taking into consideration the existing exigencies within the contemplation of Congress. While the United States was not at war when this legislation was enacted, and the question is not one relating to the exercise of power incident to the actual conduct of war, it remains true that the Act was passed at a time when many of the civilized nations were at war and the question of maintenance of the food supply was of first importance. Even if it be assumed that our entry into the war was not then contemplated, there was still a serious emergency due to the devastation of the war

and the withdrawal from agriculture of productive labor. The exigency which later was recognized by every one with respect not only to the food supply of this country, but of the world, it was within the power of Congress to foresee. If the words—"provide for the common defence and general welfare of the United States"—while not creating an independent power, do qualify the power to lay taxes and to make appropriations, and are not deemed to be limited by the succeeding specification of powers, it would be difficult to imagine a matter more important for the consideration of Congress, as pertaining to the general welfare, than the stimulation of agricultural development in the light of the situation existing in the year 1916.

We are at a loss to understand in view of these circumstances upon what ground systematic encouragement of the cultivation of the soil could possibly be regarded as not a matter of public and national concern.

The Farm Loan Act deals with pecuniary aid alone, that is, it is concerned only with the application of money.

There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over the lands within their borders.

The case of *Kansas* v. *Colorado*, 206 U. S. 46, which counsel for the appellant stresses, is not at all in point. There is an obvious distinction between the provision for financial aid, which is within the power of Congress as expressly con-

ferred and as understood from the foundation of the Government, and the conduct of activities and the management of concerns within the State which lie outside the power of Congress.

The case of *Kansas* v. *Colorado* was an original suit brought to restrain Colorado from diverting the water of the Arkansas River for the irrigation of lands in Colorado and thus preventing, as was alleged, the natural and customary flow of the river into Kansas. The United States filed a petition for intervention, asserting the right to control the waters of the river to aid in the reclamation of arid lands. The contention was that "the determination of the rights of the two states *inter sese* in regard to the flow of waters in the Arkansas River" was "*subordinate to a superior right to control the whole system of the reclamation of arid lands*". It was recognized in the opinion of Mr. Justice Brewer that the National Government had full power to dispose of and make all needful rules and regulations respecting its own property, but the power over its own property did not embrace a grant to Congress of legislative control over the States. Appreciating this, the Government brought forward the doctrine of "inherent power" as giving to Congress the broad control asserted over the whole subject of reclamation of arid lands. The contention involved the subordination of all proceedings with respect to the *actual conduct* of that reclamation to such as might be provided by the legislation of Congress.

In denying the doctrine of inherent power as asserted, the Court did not in any way limit the familiar scope of the power which the Constitution actually confers. The present question was in no way involved. Here, as has been said, there is

simply the extension of *financial aid.* No one has to take it who does not want it. No one can get it except under the conditions stated, which merely assure systematic aid to promote cultivation of the soil throughout the country. There is no provision for the conduct of agricultural activities and no interference whatever with any right reserved to the States.

To achieve its purposes it was competent for Congress to create the Instrumentalities for which the Farm Loan Act provides.

Considering the constitutional power expressly conferred, and the practice from the very beginning with respect to the scope of appropriations, it is manifest that Congress could have provided for dealing with the matter through departmental bureaus without creating corporations. Congress could have made appropriations and, to raise additional moneys, could have exercised the borrowing power by the issue through the Treasury of ordinary obligations of the Government. Having this power, Congress could establish in its discretion a convenient mechanism for the application of money to achieve the desired object. The Federal Land Banks and the Farm Loan Bonds are appropriate means to the end.

In truth, as has been pointed out, at the outset the Federal Land Banks were virtually incorporated bureaus of the Government. With the exception of a very small amount, the Government owned all the stock; the Government appointed the directors and controlled and actually directed everything that was done. No one but a Government officer had anything to say with respect to

the issue of Farm Loan Bonds or the disposition of their proceeds. The Federal Farm Loan Board placed upon the market all the Federal Land Bank Bonds that have been issued. And the Farm Loan Act contains the explicit provision that these bonds must "be deemed and held to be instrumentalities of the Government of the United States."

If it were necessary to present the question, we should urge with confidence that these Federal Land Bank bonds are in truth supported by the good faith and credit of the United States and are protected by virtue of an actual exercise of the borrowing power.

The fact that a special fund is created to meet the liability on the bonds, or that recovery is limited, is by no means controlling. The Government is not liable in any case unless it consents to be, and of course it may fix the measure of liability and provide particular funds or security for payment. But when the Government, to meet a governmental purpose, goes out through its officers to borrow money, and issues bonds in the name of its creature which it not only dominates but directs, and provides that these bonds shall "be deemed and held to be instrumentalities of the Government of the United States," we think that, apart from any question of mere liability to suit, the good faith and credit of the United States lie behind them. Congress had just as much right to provide for the issue of bonds in this way as in any other, unless it can be said—which of course it cannot be—that Congress could not issue bonds and establish a particular security for their payment without admitting liability of the Government to suit.

It may be observed in this connection that in

Briscoe v. *Bank of Kentucky,* 11 Pet., 257, it was held that the bank notes of a State bank were not bills of credit issued by the State in violation of the Federal Constitution (Art. I, sec. 10), although the State was the only stockholder in the bank. This decision met with a strong dissent from Mr. Justice Story whose views, as he stated (*id.,* p. 350), had been shared by Chief Justice Marshall. Mr. Justice Story said (*id.,* p. 345):

> "It is said that the bills are not taken on the credit of the state; because the state has not promised, in terms, to pay them. If it had so promised, the state not being suable, the holder could here have no redress against the state. But I insist that, in equity, and in justice, the bills must be treated as the bills of the state; and that if the state were suable, a bill in equity would lie against the state, as the real debtor; as the real principal; and I say this upon principles of eternal justice, and upon principles as old as the foundations of the common law itself. * * * It has been said at the argument, that funds were provided for the payment of the bills by the provisions of the charter; and therefore no credit to the state, *ultra* these funds, can be inferred. But surely the case of the old colonial bills of credit answers that position. They had funds assigned for their redemption; they in many cases had mortgages upon loans authorized to be made, as they are in the present charter; and yet the legislature called them bills of credit. The colonists did not promise to pay them; and yet they deemed them their bills of credit. Why? Because in truth, and in fact, and not upon any metaphysical subtleties and fictions, they were issued upon the general credit of the state; and if the funds pledged fell short of the payment, the state was bound to redeem them."

The decision in the *Briscoe* case, overriding the views thus expressed, as Professor Willoughby says "by an extremely loose interpretation" rendered "practically nugatory one of the provisions of the Constitution." (Willoughby on the Constitution, sec. 42, p. 83). This decision and others which followed it (*Woodruff* v. *Trapnall*, 10 How., 190, *Curran* v. *Arkansas*, 15 How., 304) were also criticised by Mr. Justice Miller in his "Lectures upon the Constitution" (p. 583) who said: "The exercise of this power of creating a bank with power to issue circulating notes, in which although the bank assumed the nature and character of a corporation doing business in the name of trustees and directors, yet the State itself is the sole owner of the capital stock, is more doubtful and probably would not be sustained at this day." And, certainly, the principle "that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen" (*Bank* v. *Planters' Bank*, 9 Wheat., p. 907) should not be deemed to be applicable where the Government is acting in its sovereign capacity (See 11 Pet., p. 349).

In view of such criticisms, it may well be doubted whether the decisions in the *Briscoe* case, and in the other similar cases above cited, will be extended beyond the precise point involved, or will be treated as applicable to the transactions of the Government of the United States under the authority of Congress in the exercise of what Congress affirms to be the public functions of the Government.

The borrowing power committed to Congress

is free of limitation. With respect to the fact and effect of its exercise, substance and not form must control. It is difficult to see upon what ground the validity of obligations thus issued pursuant to Act of Congress, for money actually borrowed through an organization which is in substance operating as an incorporated bureau of the Government, under the direction and control of Federal officers in the Department of the Treasury, can successfully be assailed.

But, this question aside, we suppose it to be clear that Congress having power to provide financial aid in order to stimulate agricultural development throughout the country, could organize *the means for providing this financial aid in any appropriate manner according to its judgment.* The decision as to the expediency of the means lies with Congress and not with the courts. If Congress desires to provide a corporate organization as a facility for the accomplishment of its proper purpose there is no ground for denying it the power.

In the language of Mr. Chief Justice Marshall in *M'Culloch* v. *Maryland* (*supra*) already quoted: "The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else." The only question is whether it is an appropriate means, adapted to a proper end, and not prohibited.

The incorporation of national banks and of railroad companies under acts of Congress afford the most familiar illustrations. The principle applies although the corporation thus constituted as a means to attain a proper governmental end is endowed with powers for the transaction of private business and its stock is held, and its profits

are received, by private individuals. This question was forever set at rest by the decision in *Osborn* v. *Bank of the United States*, 9 Wheat. 738 (following that of *M'Culloch* v. *Maryland supra*). Mr. Chief Justice Marshall said in the *Osborn* case (*id.* pp. 860, 861):

> "The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government, is admitted; but the Bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the Court, in the case of *M'Culloch* v. *The State of Maryland*, is founded on, and sustained by, the idea that the Bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavour to distinguish between this trade and its agency for the public, between its Banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, &c. While they

seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business."

Farmers' & Mechanics' National Bank v. *Dearing*, 91 U. S. 29.

Davis v. *Elmira Savings Bank*, 161 U. S. 275.

Owensboro National Bank v. *Owensboro*, 173 U. S. 664.

Easton v. *Iowa*, 188 U. S. 220.

First National Bank v. *Union Trust Company*, 244 U. S. 416.

The established principle was again re-stated in the recent case of *First National Bank* v. *Union Trust Company* (*supra*). There, the Court held that it was competent for Congress in establishing the Federal Reserve Board by the Act of December 23, 1913 (38 Stat. 251, 262), to authorize that Board to grant by special permit to national banks, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, that is, to exercise the powers commonly exercised by trust companies. The Court regarded it as settled that the implied power of Congress to confer a particular function upon a national bank is to be tested, not by the nature of the function viewed by itself, but by its relations to all the functions and attributes of the bank considered as an entity. The result of the decision in *Osborn* v. *The Bank* (*supra*) is thus stated by the Chief Justice:

"Considering more fully, however, the question of the possession by the corporation of private powers associated with its public authority and meeting the contention that the two were separable and the one, the public

power, should be treated as within and the other, the private, as without the implied power of Congress, it was expressly held that the authority of Congress was to be ascertained by considering the bank as an entity possessing the rights and powers conferred upon it and that the lawful power to create the bank and give it the attributes which were deemed essential could not be rendered unavailing by detaching particular powers and considering them isolatedly and thus destroy the efficacy of the bank as a national instrument. The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of the opinion, that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature.' p. 864." (244 U. S. p. 420.)

Applying these principles, it follows that Congress was entitled in its discretion to establish the Federal Land Banks as means for the accomplishment of its end in providing financial aid to stimulate agricultural development in a systematic manner throughout the country. Having power to establish these banks, it was competent for Congress to provide that the Treasury should subscribe to their capital stock. The banks were lawfully created and the stock could be taken as a lawful investment of public funds.

And as an incident to the provision for financial aid for the stated purpose, Congress was entitled to provide officers and bureaus, registrars and appraisers, and it could require appraisements, the taking of securities and direct generally the method of handling and investing moneys received in the discharge of loans, as well as authorize the loans themselves.

The same principle sustains the validity of the provisions for the issue of Farm Loan Bonds. As Congress had the power to apply the public money through the investment in the capital stock of the Federal Land Banks, to be employed as prescribed, Congress also had the power to provide for the issue of Farm Loan Bonds for the same purpose. If Congress had the power to organize financial aid in order to stimulate agricultural development, and to use the borrowing power of the Government for this purpose, it could create an appropriate organ to raise the necessary moneys and it could prescribe the manner in which these moneys should be raised so as to adapt its action to the exigency with which it was competent to deal. Congress could provide for raising the money directly by borrowing through the Treasury in the usual manner if it chose to do so, or it could accomplish the same purpose through a fitting instrumentality of its creation. And, of course, it could prescribe the standards, requisites and conditions of the action it authorized and place the issue of the Farm Loan Bonds under the approval in each instance of the Federal Farm Loan Board, established in the Treasury Department, as prescribed in the Act.

THIRD. Congress had authority to create the Federal Land Banks as instrumentalities of the Government to act as depositaries of public moneys and as financial agents of the Government and to equip the banks thus established with power to issue Farm Loan Bonds for the described purposes.

The fact that Congress combined the exercise of two powers does not derogate from the exercise of either one. Congress not only had the authority to provide financial aid to promote the cultivation of the soil and to create an appropriate organization to that end, but Congress also had authority to provide for the creation of additional *financial institutions to assist it in the fiscal operations of the Government.*

The Federal Land Banks serve both purposes. That they serve either one is sufficient to sustain the validity of the legislation in question. The power of Congress to establish banks, as appropriate facilities to aid in the fiscal operations of the Federal government is beyond controversy (*M'Culloch* v. *Maryland, supra; Osborn* v. *Bank of the United States, supra; First National Bank* v. *Trust Company, supra*). The fact that a banking institution established by the Federal government may largely be engaged in private transactions incident to the banking business, that is, in receiving deposits from individuals, firms, and private corporations, and in making ordinary loans and discounts, through which it may derive the gains which justify it as a business enterprise, does not militate against the authority of Congress to incorporate it as a Federal agency, in view of the fact that the nature of its business is

such as to qualify it for service in the financial transactions of the Government. The particular grounds which justify the creation of a *bank* to furnish assistance to the Government were thus stated in *M'Culloch* v. *Maryland* (4 Wheat., pp. 407-409, 422-424):

> "Although, among the enumerated powers of government we do not find the word 'bank' or 'incorporation,' we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its government. * * * Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. * * *
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> "It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. * * *
>
> "If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government.

That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government. * * *

"* * * But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. * * * But * * * to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. * * *

"After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land."

(See, also, Hamilton's Argument on the Constitutionality of the Bank of the United States, February 23, 1791; Story on the Constitution, secs. 1259-1271.)

The validity of the present National Bank system rests upon the same grounds. In *Farmers' & Mechanics' National Bank* v. *Dearing,* 91 U. S., 29, 33, it was said: "The national banks organized under the Act (of 1864) are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge." (See also *Mercantile National Bank* v. *New York,* 121 U. S., 138, 154; *Davis* v. *Elmira Savings Bank,* 161 U. S., 275, 283; *Easton* v. *Iowa,* 188 U. S., 220, 229.)

In a general way, the facilities furnished by national banks may be described as those relating

(1) *To the receipt, transmission and disbursement of the public money.* (See *M'Culloch* v. *Maryland,* 4 Wheat., pp. 407, 408, 409.) It was said of the old Bank of the United States: "It is an immense machine, economically and beneficially applied to the fiscal transactions of the nation. * * * It is now become the functionary that collects, the depository that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away the millions that pass annually through the national treasury." (Mr. Justice Johnson, in *Osborn* v. *The Bank,* 9 Wheat., p. 872.)

(2) To the exercise of *the borrowing power.* "The bank has a direct relation to the power of borrowing money, because it is an usual, and, in sudden emergencies, an essential instrument, in

the obtaining of loans to the government. A nation is threatened with a war; large sums are wanted on a sudden to make the requisite preparations; taxes are laid for the purpose; but it requires time to obtain the benefit of them; anticipation is indispensable. If there be a bank, the supply can at once be had; if there be none, loans from individuals must be sought. The progress of these is often too slow for the exigency; in some situations they are not practicable at all. Frequently when they are, it is of great consequence to be able to anticipate the product of them by advances from the bank. * * * The legislative power of borrowing money, and of making all laws necessary and proper for carrying into execution that power, seems obviously competent to the appointment of the *organ,* through which the abilities and wills of individuals may be most efficaciously exerted for the accommodation of the government by loans." (Hamilton, "National Bank," February 23, 1791.)

(3) To the exercise of the power *to regulate the currency of the country* through the issue, under appropriate regulations, of national bank notes which pass from hand to hand as currency. (*Osborn* v. *The Bank,* 9 Wheat., pp. 864, 873; *Juilliard* v. *Greenman,* 110 U. S., p. 445; *Veazie Bank* v. *Fenno,* 8 Wall., p. 549.)

It cannot be said that the Federal Land Banks are to perform the last mentioned function, with respect to the currency, for while Farm Loan Bonds may be issued in small denominations, it would be far-fetched to consider them as intended to form part of the currency of the Nation. But although "the currency which it circulates" was

believed to make the Bank of the United States "a more fit instrument for the purposes of government than it could otherwise be" (*Osborn* v. *The Bank, supra*), the power of Congress to charter a bank was maintained, as was stated by Mr. Justice Gray, in *Juilliard* v. *Greenman, supra*, "chiefly upon the ground that it was an appropriate means for carrying on the money transactions of the government."

Despite the limited banking powers with which the Federal Land Banks are invested, they are nevertheless agencies for national service in connection with the fiscal operations of the Government.

The Act (following the similar language in relation to National Banks, United States Revised Statutes, sec. 5153) provides that all Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money (except receipts from customs) under the Secretary's regulations, and these banks may also be employed as financial agents of the Government, and must perform whatever reasonable duties may be required of them in these capacities. The Secretary of the Treasury is to take satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with these banks and for the faithful performance of their duties as financial agents. The Federal Land Banks although limited in banking privileges, are still facilities for the receipt, transmission, and payment of money. They are institutions organized to deal in money and thus are appropriate means for the conduct of transactions relating to the public money. As

banking organizations, they have the qualifications to render service as depositaries and financial agents. In this aspect, it cannot be considered as a determining feature that these banks are to make loans to cultivators of the soil on farm security, and not to merchants on commercial paper; or that they are not to accept deposits payable upon demand except from their own stockholders. The Federal Land Banks may borrow money, give security therefor, and pay interest thereon; they may receive deposits from their stockholders, payable upon demand; they may deposit their securities and their current funds subject to check with any member bank of the Federal Reserve System and receive interest; they must hold at least twenty-five per cent. of the capital for which stock is outstanding in the name of National Farm Loan Associations in quick assets, consisting of cash in their own vaults, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under the rules of the Federal Farm Loan Board; their farm loan bonds are a lawful investment for all fiduciary and trust funds (subject to the laws of the several States), and may be accepted as security for all public deposits. In short, the Federal Land Banks will be constantly, in the course of their authorized business, receiving and disbursing money and will thus have facilities available for governmental transactions.

It is not a question for the courts whether the Government has need of these additional facilities. That is a matter for Congress to decide if the facilities are of the kind which the Federal Government may properly use in the performance of its functions.

In addition to the facility afforded by the Federal Land Banks in the receipt, transmission, and payment of public money, they may be deemed to have relation to the exercise of the borrowing power, generally. One of the purposes set forth in the title of the Act is "to furnish a market for United States bonds." It is required that not less than five per cent. of the capital of these banks for which stock is outstanding in the name of National Farm Loan Associations shall be invested in United States Government bonds. Apart from this, the Federal Land Banks are expressly empowered to buy and sell United States Government bonds. Amortization and other payments on the principal of mortgage loans may be used for the purchase of United States Government bonds. The Farm Loan Bonds which these banks are authorized to issue may be secured by United States Government bonds and the latter may be substituted as such security for mortgages withdrawn from the Farm Loan Registrar.

The Federal Farm Loan Board would be at liberty, it would seem, to prescribe as a condition of its approval of any issue of these bonds to what extent the ordinary obligations of the Government should form the underlying security for such issue. It is also to be noted that the National Farm Loan Associations which may be organized in all parts of the country may issue certificates against deposits of current funds, bearing interest as provided, which are convertible into farm loan bonds when presented at the Federal Land Bank of the district. The deposits which may thus be received by these subsidiary associations are to be forthwith transmitted to the Federal Land Bank of the district and may be invested by

it in the purchase of farm loan bonds issued by a Federal Land Bank and secured as above stated.

While the Federal Land Banks have been in existence but a short time, they have already been called upon to serve the Government as fiscal agents in a matter of no little importance. When, in the summer of 1918, it was necessary to do everything possible to increase crops, the President set aside $5,000,000, out of the $100,000,000 of war funds placed under his control, for the purpose of making seed grain loans to farmers in drought-stricken sections. The Federal Land Banks of Wichita, St. Paul and Spokane were designated as financial agents of the Government for this purpose, and they made upwards of 15,000 of these seed grain loans. The Federal Land Banks acted in this matter without compensation, fulfilling the duty imposed upon them by virtue of their organization. These facts appear in the Bill (Transcript of Record, p. 10).

We know of no authority in the courts to measure the extent to which these new fiscal agencies either are needed or will be used. They are engaged in fiscal operations and they are fitted to act as fiscal agents for the Government and Congress is the sole judge as to whether or not they should have been established.

Congress, we submit, can make as many fiscal agents as it chooses. It can establish these where it pleases. It can give them extended or limited banking powers. It can prescribe the business in which they shall be engaged. It can permit them to engage in private business. In short, Congress is the judge of the necessity of their establishment and of the scope of their operations.

The only question for the Court, when Congress states that it has organized a financial institution as an aid to its fiscal operations, is whether in any conceivable manner the institution can serve the prescribed purposes. If it can, we submit that this is an end of the inquiry so far as the Court is concerned. The remaining questions are for the legislative discretion.

In the present case, Congress has specifically declared that it has created these banks to "furnish a market for United States bonds, to create Government depositaries and financial agents for the United States." It makes no difference how limited the banking powers are; these institutions are financial institutions which deal in money and, being equipped for this purpose, they are equipped to serve the Government. Congress says that they are created to serve the Government; in fact, they have already served the Government in a notable way. In this view, the validity of their creation is not open to question.

Having the power to create these Federal Land Banks, Congress also had the power to authorize them to issue bonds and generally to transact the business in which they were engaged under the terms of the Act.

While the motive which led Congress to create these banks was an entirely proper one, and while it is submitted that they aid in the performance of a governmental function in providing financial aid in order to promote the cultivation of the soil and the securing of a proper food supply, they also stand before the Court as fiscal agents and if it were possible to take any other view of ulterior purposes, the action of Congress could not be questioned upon this ground (*Mc-*

Cray v. *United States*, 195 U. S., p. 56; *Hamilton, Collector*, v. *Kentucky Distilleries & Warehouse Company*, decided December 15, 1919).

FOURTH. Congress had power to protect from taxation the Federal Land Banks thus created and the Farm Loan Bonds thus issued under its authority.

As we said at the outset, the question of the validity of the tax exemption feature of the Act is not an independent one. This question turns upon the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. It cannot be doubted that Congress can protect its corporations validly created, and the securities validly issued by such corporations under its authority, from tax levies.

The States are without authority to tax the operations of the Federal Government, and hence cannot tax what may properly be deemed to be the instrumentalities of that Government. In order to determine the appropriate application of this principle, the leading decisions may be briefly reviewed.

In *M'Culloch* v. *Maryland* (*supra*), the State of Maryland sought to enforce a tax upon a branch of the Bank of the United States established within that State. In holding the tax to be invalid, Chief Justice Marshall said (4 Wheat., p. 436):

> "The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional

laws enacted by Congress to carry into execution the powers vested in the general government. * * *

"This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

It was argued in *Osborn* v. *Bank* (*supra*), that the distinction should be drawn between the trading of the bank with individuals for its own advantage and its agency for the public, and hence that the State of Ohio could tax its business. In answer to this argument, Chief Justice Marshall said (9 Wheat., pp. 861-862):

"Why is it that Congress can incorporate or create a bank? * * * It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter? * * * Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute. * * *

"This distinction, then, has no real existence. To tax its faculties, its trade, and occu-

> pation, is to tax the bank itself. To destroy or preserve the one, is to destroy or preserve the other."

Upon the same principle, it was held in *Weston* v. *City Council of Charleston*, 2 Pet., 449, that the stock (that is, the bonds) of the United States could not be taxed by the States. The tax was found to be "a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution" (See also *Bank of Commerce* v. *New York City*, 2 Black, 620).

A similar ruling was made in *Bank* v. *Supervisors* (7 Wall., 26), as to United States notes issued under the Loan and Currency Acts of 1862 and 1863. There, it was insisted that the notes were issued as money, and as this was their controlling quality, they were subject to taxation like coin issued under the same authority. In such a case it was recognized that Congress would have a discretion to determine whether State taxation of such a subject would injuriously affect the functions of the Federal Government. Chief Justice Chase said:

> "It cannot be said, as we have already intimated, that the same inconveniences as would arise from the taxation of bonds and other interest-bearing obligations of the government, would attend the taxation of notes issued for circulation as money. But we cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be enhanced by exemp-

tion from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption.

"There remains, then, only this question, Has Congress exercised the power of exemption?

"A careful examination of the acts under which they were issued, has left no doubt in our minds upon that point."

In *Thomson* v. *Pacific Railroad* (9 Wall., 579), the question arose whether the *property* of the railway company, *a State corporation*, which was "entitled to certain benefits, and subject to certain duties under the legislation of Congress" was subject to a State tax. The Court held that it was. The Court thought there was "a clear distinction between the means employed by the government and the property of agents employed by the government," saying: "Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means." (See, to the same effect, *National Bank* v. *Commonwealth*, 9 Wall., p. 362.) And in the *Thomson* case, it was deemed "safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection" (*id.*, p. 591).

In *Railroad Company* v. *Peniston*, 18 Wall., 5, a tax by the State upon the real and personal property (as distinguished from its franchises) of the Union Pacific Railroad Company, a Fed-

eral corporation, was upheld. Mr. Justice Strong, with whom three Judges concurred, said (p. 36):

> "It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Mr. Justice Swayne, concurring in the judgment (pp. 37, 38), thought that there was "no reason to doubt that it was the intention of Congress *not* to give the exemption claimed," adding:

> "But I hold that the road is a National instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so. For some of the leading authorities in support of the principle involved in this view of the subject I refer to the *Chicago and Northwestern Railway* v. *Fuller* (17 Wall., 560), decided by this Court a short time ago."

(See also *California* v. *Pacific R. R. Co.*, 127 U. S., p. 41.)

Adopting the same view, it was said by Mr. Justice Brewer, in delivering the opinion of the Court in *Reagan* v. *Mercantile Trust Co.*, 154 U. S., pp. 416, 417, as to the Texas and Pacific

Railway, a Federal corporation, that "*conceding to Congress the power to remove the corporation in all its operations from the control of the State,* there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it," and it was concluded that the corporation was "as to business done wholly within the State, subject to the control of the State in all matters of taxation, rates, and other police regulations."

The result of the decisions was thus stated in *Central Pacific Railroad Co.* v. *California*, 162 U. S., p. 125:

> "It may be regarded as firmly settled that although corporations may be agents of the United States, their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Co.* v. *Peniston*. *Van Brocklin* v. *Tennessee*, 117 U. S., 151, 177.
>
> "*Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question.* Congress did not see fit to do so here, and unless we are prepared to overrule a long line of well considered decisions the case comes within the rule therein laid down."

With respect to national banks, it has been held that their *personal assets* are exempt from State taxation. In *Rosenblatt* v. *Johnston*, 104 U. S., 462, this conclusion was reached with respect to the personal property of an insolvent national bank which was in the hands of a receiver appointed by the Comptroller of the Currency under section 5234 of the Revised Statutes. The decision

was placed upon the ground that the property in legal contemplation still belonged to the bank; that if the shares had any value they were taxable in the hands of the holders, under section 5219 of the Revised Statutes, but that the property in the hands of the receiver was "exempt to the same extent *as it was before his appointment.*"

By reason of the policy and purpose of the National Bank Act it was said in *Mercantile Bank* v. *New York,* 121 U. S., p. 154, that "neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States." It was added that it "was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by law." And in *Talbott* v. *Silver Bow County,* 139 U. S., p. 440, it was said: "That shares of stock in a national bank are not subject to taxation without the consent of Congress is conceded." (See *People* v. *Weaver,* 100 U. S., p. 543; *Davis* v. *Elmira Savings Bank,* 161 U. S., p. 283.)

As to national bank notes, Congress expressly provided by the act passed in 1894 (28 Stat., 278, c. 281) that the "circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver or other coin," should be "subject to tax-

ation as money on hand or on deposit under the laws of any State or Territory."

In *Owensboro National Bank* v. *Owensboro*, 173 U. S., 664, a suit brought to restrain the collection of alleged "franchise" taxes under an act of Kentucky, the Court said (through Mr. Justice White)—after referring to the principles established by the previous decisions:

> "It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, *were it not for the permissive legislation of Congress.* . . . .
>
> "Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year, act of June 3, 1864, c. 106, 13 Stat., 99, power was granted to the States, not to tax the banks, their franchises, or property, but to tax the shares of stock in the names of the shareholders. . . . .
>
> "This section, then, of the Revised Statutes, *is the measure of the power of the State to tax national banks, their property or their franchises.* By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void."

(See also *First National Bank* v. *Albright*, 208 U. S., pp. 552, 553).

In *Clement National Bank* v. *Vermont*, 231 U. S., p. 135, it was held that with respect to the

taxation of *depositors' credits,* the Federal statute does not prescribe a rule, and the property being normally subject to the State's taxing power, there was no warrant for implying a restriction which would extend beyond the requirements of protection from the prejudicial effect of such exactions as would be unjustly discriminatory.

The rule with respect to the taxation of Federal instrumentalities has had recent application in *Farmers Bank* v. *Minnesota,* 232 U. S., 516, holding that a State may not tax bonds issued by a municipality of a territory, as such a tax was one upon the operations of the Government and not in any sense a tax upon the property of the municipality; and that "to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." (*id.,* p. 526.) And in *Choctaw & Gulf R. R. Co.* v. *Harrison,* 235 U. S., 292, a tax upon the gross sales of coal from mines which the railroad company had leased from Indians, was held to be invalid, as it was a tax upon an instrumentality through which the United States was performing its duty to the Indians. (See also *Indian Territory Oil Co.* v. *Oklahoma,* 240 U. S., 522; *Bank of California* v. *Richardson,* 248 U. S., 476.)

In the present case, Congress has provided explicitly that "*every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate* held, purchased, or

taken by said bank or association under the provisions of section eleven and section thirteen of this Act."

It is also provided that "*first mortgages*" executed to the Federal Land Bank, and "*farm loan bonds* issued under the provisions of this Act, *shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.*"

In view of these provisions, it is not necessary to discuss the question whether, or in what cases, there must be an explicit declaration by Congress in order to create an exemption from State taxation, either of the property held by Federal corporations, or of the shares or obligations issued by them. (See *Bank* v. *Supervisors,* 7 Wall., 26; *Thomson* v. *Pacific Railroad,* 9 Wall., p. 591; *Railroad Co.* v. *Peniston,* 18 Wall., pp. 37, 38; *Reagan* v. *Mercantile Trust Co.,* 154 U. S., pp. 416, 417.) Nor is it essential to consider to what extent action by Congress may be held, as it has been said, to permit State taxation. (See *Mercantile Bank* v. *New York,* 121 U. S., p. 154; *Owensboro National Bank* v. *Owensboro,* 173 U. S., p. 664.) Here, the exemption is given expressly.

If the subject of the exemptions is deemed to be so intimately and unquestionably related to the operations of the Federal agency as to be inherently exempt, the action of Congress is merely declaratory. And, if the case is one in which Congress can be said to have discretion, certainly Congress has exercised it. From every point of view, the exemption is a valid one. Congress has complete power to protect the Federal Land Banks as Federal corporations, and the Farm

Loan Bonds as securities issued by these corporations under the authority of Congress, from State taxation.

With respect to the exemption of the Farm Loan Bonds issued by the Federal Land Banks from Federal taxation, it is sufficient to say that Congress pledges this immunity and to the extent that these bonds are accepted and paid for in reliance upon this stipulation it would be a gross violation of faith to repudiate it. Further, this provision of the Act accepted by the taking and paying for the bonds, constitutes an agreement supported by consideration which would be valid and binding. In view of the broad authority of Congress in matters of taxation, it is submitted that Congress has ample power to make this provision for exemption—a power similar to that which has been recognized as belonging to the States. (See *Home* v. *Rouse,* 8 Wall., 430; *Farrington* v. *Tennessee,* 95 U. S., 679.)

As was said by the Supreme Court of the United States in the *Sinking Fund Cases,* 99 U. S., pp. 718, 719: "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. . . . . The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be

if the repudiator had been a State or a municipality or a citizen." So, referring to legislation with respect to certain railroads, the Supreme Court said in *United States* v. *Central Pacific R. R. Co.*, 118 U. S., p. 238: "These sections" (referring to the applicable Act of Congress) "taken together, constitute the contract between the United States and the appellee. . . . . This contract is binding on the United States, and they cannot, without the consent of the company, change its terms by any subsequent legislation. *Sinking Fund Cases, ubi supra.*"

Relying upon the immunity from taxation expressly conferred by Congress, and the validity of the securities, investors have purchased the Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board to the extent of over $150,000,000. The appellant assails these existing securities. The attack cannot be sustained by doubts, for mere doubts must be resolved in favor of the validity of Congressional action. It is incumbent in a challenge of this most serious character for the appellant to establish its contention by reasoning so conclusive as to admit of no reply. Instead of sustaining this burden, the argument for the appellant runs counter to principles that have been established since the days of Marshall and to a weight of opinion in and out of Congress which is sufficiently indicated by the fact that three and a half years have elapsed since the passage of the Act, that Congress, in pursuance of its pledge, has repeatedly in Income Tax Acts exempted the Farm Loan Bonds, and that the States throughout the country have recognized the exemption from local taxation.

Under the accepted principles of constitutional construction we submit that the appellant's contention is inadmissible.

The decree of the District Court dismissing the bill should be affirmed.

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